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House Insurance Committee
via email to Committee Clerk Sergio Cavazos at Sergio.Cavazos_HC@house.texas.gov

Chairman Lucio,

The Texas Association of Health Plans (TAHP) is the statewide trade association representing health insurers, health maintenance organizations, and other related health care entities operating in Texas. Our members provide health and supplemental benefits to Texans through employer-sponsored coverage, the individual insurance market, and public programs such as Medicare and Medicaid.

We are writing to provide information in response to your RFI regarding the implementation of HB 2536, which requires reporting by drug manufacturers, pharmacy benefit managers, and health insurers regarding pharmaceutical practices, including the pricing and availability of insulin.

Out-of-control prescription drug prices have profound consequences for all Americans. Too many Texans have to choose between paying their bills and accessing lifesaving medicines. The rising cost of prescription drugs is unsustainable not only for Texas families, but also for Texas businesses and our state's economy. For the first time, health insurers are paying more for prescription drugs than for health care provider services, and prescription drugs now account for 23 cents of each dollar consumers spend on health insurance.[1]

To make lifesaving drugs available and affordable for patients, health insurance providers and our pharmacy benefit manager (PBM) partners negotiate lower costs with drug companies so our members pay less out-of-pocket and have lower premiums. These discounts reduce drug prices and costs for patients, employers, and other payers. By combining our bargaining power, health plans and our PBM partners:

- Save members 40-50% on their annual prescription drug and related costs.
- Will save consumers and taxpayers more than $650 billion (up to 30%) on drug benefit costs over the next decade.[2]

[1] https://www.ahip.org/wp-content/uploads/2017/03/HealthCareDollar_FINAL.pdf
[2] https://www.pcmanet.org/our-industry/

It's essential to recognize that the process of determining how much consumers actually pay for prescription drugs is driven entirely by that drug's original list price, which is determined solely by the drug manufacturer. Because there is little to no transparency or accountability — and sometimes no competition — in the prescription drug market, patients, businesses, taxpayers, hospitals, doctors, and pharmacists pay more. Without legislative and regulatory action to reduce list prices, we will never achieve the goal of delivering more affordable medicines and lower costs for patients, consumers, employers, and taxpayers.

TAHP supports market-based solutions that reduce drug prices by delivering real competition, creating more consumer choice, and ensuring open and honest drug pricing that is tied to the value delivered to patients. One of these solutions is increased transparency. Requiring greater transparency of prescription drug prices and price increases is a crucial step toward keeping costs down and ensuring that consumers have the information they need to make informed health care decisions.

With last session's SB 2536, Texas legislators worked to develop and pass some of the nation's strongest consumer protections for drug price transparency. However, there have been several implementation issues with the new law that are undermining the goal of increased transparency.

HB 2536 not only requires drug companies to account for exorbitant price hikes going forward, but it also applies retroactively, meaning companies that ratcheted up prices in 2017 and 2018 must explain why under the law. Specifically, it requires drug manufacturers to report drug price increases of at least 15% within one calendar year and at least 40% over three calendar years. In addition to the required drug manufacturer reporting, PBMs and health plans must also submit annual reports with information such as PBMs' aggregated rebates, fees, and "price protection payments" as well as health plans' 25 most-frequently prescribed drugs, increases in annual drug spending, and premium increases attributable to drugs.

First, HHSC delayed implementation of the legislation in order to allow manufacturers more time to submit the required data, even though this should not have been an issue as the manufacturers already have to compile the same information for other states. The HHSC website was updated in late August with price increase information, but much of the data submitted by drug companies is vague and is not presented in a useful manner. The law requires drug companies to include "a statement regarding the factor or factors that caused the increase in the wholesale acquisition cost and an explanation of the role of each factor's impact on the cost" in their price increase reports.[3] Unfortunately, most statements published on HHSC's website so far indicate a refusal to provide the required information or are so vague that they are meaningless. For example, at least one company simply claims its pricing plans are proprietary and not publicly available.

[3] https://statutes.capitol.texas.gov/Docs/HS/htm/HS.441.htm

The Legislature should ensure HHSC fully implements and enforces HB 2536 so that all required information for applicable price increases is reported and posted on a public-facing, consumer-friendly website in a timely manner. Enforcing all of HB 2536's reporting requirements will improve transparency around drug pricing and potentially slow price increases by shining a public light on them.

Second, the data was never supposed to include Medicaid drug data, neither separately nor combined with commercial data, because the Texas Medicaid program operates the Medicaid formulary and negotiates and collects rebates itself. Commercial health plans do not collect rebates for Medicaid business. TDI has correctly issued a revised data call for health plan issuers clarifying that Medicaid and CHIP data should not be included; however, the same has not been done for PBMs. As a result, the data submitted by PBMs likely includes data for Medicaid and CHIP plans that should not be included. As a result, this data is confusing and misleading.

Additionally, there are significant differences in the methodologies Medicaid and commercial health plans use to establish prescription drug formularies. HHSC establishes its prescription drug formulary based on strict federal requirements and Medicaid managed care organization (MCO) payment rates, while commercial health plans can develop their own individual formularies. TDI has aggregated the PBM data for all types of health insurers, including health plans that write only commercial coverage, health plans that write both commercial and Medicaid/CHIP coverage, and health plans that write only Medicaid/CHIP coverage. **This aggregation has resulted in data that is not useful for either the commercial or the Medicaid/CHIP markets. We recommend that the Legislature direct TDI to collect the appropriate data so that the resulting reports are useful and consistent.**

If the department needs Medicaid or CHIP data, it would be much more efficient for HHSC to provide the data rather than have it submitted by each MCO. This data should always be reported separately from the commercial market. The reports can be viewed on TDI's Reports and Presentations page under Data Reports.[4][5][6] The new law is providing much-needed transparency for Texas patients and employers dealing with high — and ever-increasing — prescription drugs prices. Since HB 2536 was passed, it's become clear that Texas has a lot of work to do regarding prescription drug prices, and there is significant room for improvement to the law's reporting requirements.

Insulin Prices

[4] Issuers, excluding Medicaid and CHIP data: https://www.tdi.texas.gov/reports/documents/drug-price-transparency-excluding-medicaid.pdf

[5] Issuers, with Medicaid and CHIP data: https://www.tdi.texas.gov/reports/documents/drug-price-transparency-including-medicaid.pdf

[6] Pharmacy benefit managers: https://www.tdi.texas.gov/reports/documents/drug-price-transparency-PBMs.pdf

Diabetes affects more than 30 million Americans, with 7.4 million people relying on insulin to treat their condition.[7] Thirteen percent of these adults reported that they did not take their diabetes medications as prescribed.[8] For the many diabetes patients whose lives depend on insulin, the rising cost of insulin products has created an affordability crisis that threatens their health and well-being. A recent study published by Yale researchers in JAMA Internal Medicine found that one in four diabetes patients rations their insulin due to cost.[9] Out-of-control prices for insulin products and other prescription drugs are a direct consequence of drugmakers taking advantage of a broken market for their own financial gain at the expense of patients. Three drugmakers — Eli Lilly, Novo Nordisk, and Sanofi Aventis — control 90% of the insulin market and have increased prices in lockstep for several years.[10] This broken market has received scrutiny in congressional hearings[11] on insulin, a federal investigation[12] from House Oversight Committee Chair Elijah Cummings, and at least two active lawsuits[13][14] for price-fixing. While one vial of insulin costs only a few dollars to produce and is sold for about $30 in Canada, that same vial costs $320 for a patient in the United States.

Like the price of countless other prescription drugs, the price of insulin has increased sharply over the past decade — just as the prevalence of diabetes has been on the rise. Since 2006, the number and supply of insulin products has grown while the list price of insulin products has increased exponentially, which is a direct contradiction of the economic laws of supply and demand. One study shows that drugmakers have increased the price of insulin more than 240% over the past decade; for example, from 2007 - 2017, the price of Lantus increased from $88.20 to $307.20 per vial and the price of Levemir increased from $90.30 per vial to $322.80 per vial.[15]

Another study by the Health Care Cost Institute (HCCI) found that insulin prices nearly doubled over five years (2012-2016).[16] The HCCI analysis, which tracked spending on individuals with Type 1 diabetes who have employer-sponsored coverage, found that these patients faced rapidly increasing costs, amounting to $18,494 per person in annual spending in 2016. These cost increases are driven primarily by price increases for insulin—it accounted for 31% of total per-

[7] https://care.diabetesjournals.org/content/41/6/1299
[8] https://patientengagementhit.com/news/out-of-pocket-costs-limit-medication-adherence-for-13-of-patients
[9] https://news.yale.edu/2018/12/03/one-four-patients-say-theyve-skimped-insulin-because-high-cost
[10] https://www.bloomberg.com/news/articles/2015-05-06/diabetes-drugs-compete-with-prices-that-rise-in-lockstep
[11] https://energycommerce.house.gov/committee-activity/hearings/hearing-on-priced-out-of-a-lifesaving-drug-getting-answers-on-the-rising
[12] https://www.reuters.com/article/us-usa-healthcare-drugpricing-idUSKCN1P82GP
[13] https://www.fiercepharma.com/pharma/insulin-pricing-class-action-lawsuit-to-proceed-against-sanofi-novo-and-lilly
[14] https://www.biospace.com/article/the-price-is-wrong-minnesota-ag-sues-three-companies-that-control-99-percent-of-world-s-insulin/
[15] https://www.nbcnews.com/health/health-news/several-probes-target-insulin-drug-pricing-n815141
[16] https://www.reuters.com/article/us-usa-healthcare-diabetes-cost/u-s-insulin-costs-per-patient-nearly-doubled-from-2012-to-2016-study-idUSKCN1PG136

person spending and 47% of the increase in total per-person spending over the time period. The Health Care Cost Institute also found that these increased costs are not based on rebates; even if rebates and/or manufacturer coupons could reduce the cost of insulin drugs by 50%, drug spending on insulin would still account for 31% of the total increase in spending.[17] As noted by HCCI, "there are few if any segments of the American economy where a manufacturer can raise prices by 92% and have people consume the same quantity of that product." Simply put, these sharp price increases demonstrate how broken the prescription drug market is, harm patients who rely on insulin, and reduce the affordability of coverage for all consumers and payers who bear the cost through higher insurance premiums.

TAHP members support market-based solutions that hold drug makers accountable for high list prices and put downward pressure on prescription drug prices through competition, consumer choice, and open and honest drug pricing. This includes solutions that would: (1) promote competition by removing barriers to the availability of generic drugs; (2) create a robust and competitive marketplace for biosimilars; and (3) increase prescription drug price transparency.

All Texans deserve access to the medications they need at a price they can afford. No one should have to choose between lifesaving care and affordability, and with the right solutions and genuine collaboration, we can have both.

Sincerely,

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[17] https://healthcostinstitute.org/images/easyblog_articles/267/HCCI-Insulin-Use-and-Spending-Trends-Brief-01.22.19.pdf